

BEFORE THE  
FEDERAL ELECTION COMMISSION

Campaign Legal Center  
1640 Rhode Island Ave. NW, Suite 650  
Washington, DC 20036  
202-736-2200

v.

Jerry Falwell Ministries, Inc.,  
Executive Mansion  
1971 University Blvd.  
Lynchburg, VA 24502  
804-582-7711

and

The Liberty Alliance, Inc.  
3906-B Wards Road  
Lynchburg, Virginia 24502-2942

MUR # 5491

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
2004 JUL 26 P 4:52

COMPLAINT

1. This complaint alleges violations of the federal campaign finance laws by Jerry Falwell Ministries, Inc., and Liberty Alliance, Inc., (hereafter "Corporate Respondents"), non-profit corporations incorporated in the District of Columbia.<sup>1</sup> These violations include: 1) Corporate Respondent's endorsement of a federal candidate (*i.e.*, George W. Bush) beyond the restricted class and to the general public; 2) the solicitation of funds from the general public by these Corporate Respondents to the Campaign for Working

<sup>1</sup> See Exhibit 1, documents demonstrating that Jerry Falwell Ministries, Inc., and Liberty Alliance Inc. are nonprofit corporations incorporated in Washington, D.C. Jerry Falwell Ministries, Inc., is a 501c (3) corporation, and Liberty Alliance, Inc., is a 501c (4) corporation.

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Families (“CWF”), a federal political action committee (PAC)<sup>2</sup>; and 3) the solicitation of funds by Corporate Respondents without any of the required disclaimers.

**I. The Endorsement Of Federal Candidate George W. Bush By Corporate Respondents Plainly Violates Campaign Finance Laws**

2. A corporation may lawfully endorse a federal candidate and may communicate the endorsement in a publication limited to its executive and administrative personnel and their families, and to its stockholders and their families. *See* 11 C.F.R. § 114.4(c)(6).

However, a corporation cannot endorse a federal candidate to the general public, except by means of a public announcement that an endorsement has been made and the reasons for it through a press release or press conference distributed only to the organization’s usual media contacts. *See Id.* at § 114(c)(6)(1).

3. On or about July 1, 2004, Corporate Respondents placed the following material on their website (a copy of which is attached as Exhibit 2), in the form of a communication by Corporate Respondent’s spokesperson Jerry Falwell, labeled “Falwell confidential”.<sup>3</sup> This information, which is accessible by and available to members of the

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<sup>2</sup> According to its website, CWF “is a non-partisan political action committee (PAC) dedicated to electing pro-family, pro-life and pro-free enterprise candidates to federal and state offices.” See <http://www.cwfpac.com/>.

<sup>3</sup> See [www.falwell.com](http://www.falwell.com). To access the bulletin from the website’s home page, scroll down to the place where Mr. Falwell is pictured in a section entitled “Falwell Confidential”. Click on the word “More ..” that appears at the bottom right of this section on the home page. Once you have clicked “More...”, a page appears that is the latest bulletin and email message that has been sent by Corporate Respondents. Scroll to the very bottom of this latest communication and you will see the words “Falwell Confidential Archives”. Click on “Falwell Confidential Archives”, which will then post a listing of the available months for previous communications by Corporate Respondents. On this list, click on “July 2004”. What appears on the screen next is a listing of several communications distributed during that month. Click on the one entitled: “GARY BAUER ON THE POLITICAL FRONTLINES (1 Jul 2004 15:14:30) Steve Peterson.” This then brings you to the communication that is the subject of this complaint.

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general public, remains on the Corporate Respondent's website as of this date:

For conservative people of faith, voting for principle this year means voting for the reelection of George W. Bush. The alternative, in my mind, is simply unthinkable.

To the pro-life, pro-family, pro-traditional marriage, pro-America voters in this nation, we must determine that President Bush is the man with our interests at heart. It is that simple.

The distressing fact regarding this election is, however, that President Bush stands at a political crossroads, with John Kerry ostensibly running neck-and-neck with him in many polls. In addition, Mr. Kerry has raised an astounding \$150 million for his campaign.

So the vote of every conservative is imperative. However, simply voting may not be enough. I believe it is the responsibility of every political conservative, every evangelical Christian, every pro-life Catholic, every traditional Jew, every Reagan Democrat, and everyone in between to get serious about re-electing President Bush.

That is why I am utilizing this column to urge you to support the Campaign for Working Families, which is headed by Gary Bauer. It is the organization that I believe can have the greatest impact in re-electing Mr. Bush to the Oval Office.

4. In addition to posting this communication to the general public on their website, Corporate Respondents sent the same express advocacy material endorsing federal candidate George W. Bush via email<sup>4</sup> to members of the public who had signed up to receive regular communications from the Corporate Respondents.<sup>5</sup> There is no indication that the Corporate Respondents have "members" (see 11 C.F.R. §100.134(e)-(f) (definition of definition of membership organization and members)), or that recipients

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<sup>4</sup> A copy of a news article referencing the sending of this bulletin via email is attached as Exhibit 3.

<sup>5</sup> There is a place on the Corporate Respondent's website where members of the public can receive without charge this bulletin each week via email. By clicking on "Falwell Confidential" in the upper left section of home page, a member of the public can enter an email address and each week receive an email bulletin from Corporate Respondents.

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of this endorsement are “members” of Corporate Respondents, inasmuch as members of the general public can sign up on the website to receive this communication.

5. The communication to the general public by Corporate Respondents urging the re-election of federal candidate George W. Bush, was not limited to the restricted class as required by law. See 11 CFR §114.3, *et seq.* Moreover, the posting of the endorsement of the re-election of George Bush on the website of Corporate Respondents was not limited in distribution to representatives of the news media that the corporation customarily contacts when making press announcements. See 11 CFR 114.4(c)(6). Consequently, Corporate Respondents violated federal campaign finance laws in endorsing the re-election of George W. Bush and communicating that endorsement to the general public.

**II. The Solicitation Of Funds By Corporate Respondents On Behalf Of The Campaign For Working Families, A Federal PAC, Is A Clear Violation Of Campaign Finance Laws.**

6. Corporate Respondents’ communication via email and the bulletin posted on their website solicited contributions to the Campaign for Working Families, a federal PAC. (The CWF’s FEC Identification number is C00325076). Indeed, Corporate Respondent’s website provides a link to the webpage where members of the public can make donations to CWF. A copy of this solicitation, printed out off the website of Corporate Respondents, is attached hereto. The solicitation of funds in the posted bulletin states:

I am urging everyone reading this column today to take a moment to send a financial gift to the Campaign for Working Families in order to help in the crucial election of President Bush and conservative political leaders across this nation.

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I honestly believe that it is essential that we flood Campaign for Working Families with financial help in order to secure our future. This organization that is on the frontlines on our behalf can accept contributions up to \$5,000 per person, but even small gifts are important and quickly add up when we join together.

Please, right now, pick up your phone and call 703-671-8800 or visit the Campaign for Working Families website ([https://www.cwfpac.com/cwf\\_contribution.htm](https://www.cwfpac.com/cwf_contribution.htm) ) to make a generous donation by credit card. In addition, may we pray fervently each day for the re-election of George W. Bush at this critical time in our nation's history.

7. Corporate Respondents, by posting this bulletin on its website and emailing a solicitation to members of the general public, is soliciting contributions from the general public to a federal PAC, the Campaign for Working Families, which is a clear violation of the law.

### **III. The Communication By Corporate Respondents Failed To Include Any Disclaimers**

8. In addition to this solicitation for a contribution to a federal PAC being impermissibly posted on their publicly accessible website by Corporate Respondents and sent by email to members of the public, the solicitation failed to include any disclaimers whatsoever. See 11 CFR §110.11. The communication is clearly a solicitation of contributions from the general public to a federal PAC, and requires such disclaimers the Campaign for Working Families--a clear violation of the law.<sup>6</sup>

#### Prayer for Relief

Wherefore, the Commission should conduct an immediate investigation under 2 U.S.C. §437g, and should: 1) determine that the Corporate Respondents have violated and continues to violate 2 U.S.C. §§ 441b(b)(2)(A), 441b(b)(4)(A)(i), and 441d, as well

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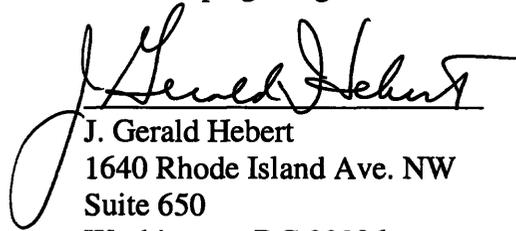
<sup>6</sup> On or about July 21, 2004, Corporate Respondents issued another bulletin posted on their website and emailed to their subscribers. This bulletin-email is attached hereto as Exhibit 4. In this bulletin-email, Corporate Respondents confirm their corporate status

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as the implementing regulations promulgated by the Federal Election Commission and referenced herein; 2) impose appropriate sanctions for such violations; 3) enjoin Corporate Respondents from all such violations in the future; and 4) impose such additional remedies as are necessary and appropriate to ensure compliance with FECA and BCRA.

Respectfully submitted,

The Campaign Legal Center,

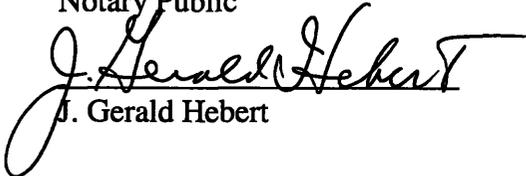


J. Gerald Hebert  
1640 Rhode Island Ave. NW  
Suite 650  
Washington, DC 20036  
202-736-2200

Sworn to and subscribed before me this 22<sup>d</sup> day of July, 2004



Notary Public



J. Gerald Hebert

**PATRICIA M. DONOVAN**  
Notary Public, District of Columbia  
My Commission Expires Feb. 28, 2005



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23305490628

**CORPORATE RECORDS & BUSINESS REGISTRATIONS**

This Record Last Updated:08/14/2002  
Database Last Updated:07-16-2004  
Update Frequency:QUARTERLY  
Current Date:07/19/2004  
Source:AS REPORTED BY THE SECRETARY OF STATE OR OTHER  
OFFICIAL SOURCE

**COMPANY INFORMATION**

Name:**JERRY FALWELL MINISTRIES**

**FILING INFORMATION**

Filing Date:03/23/1994  
State of Incorporation:DISTRICT OF COLUMBIA  
Date Incorporated:03/23/1994  
Status:ACTIVE  
Corporation Type:NON-PROFIT  
Business Type:CORPORATION  
Registration ID#:940908-DNP  
Where Filed:TAX PROCESSING DIVISON  
300 INDIANA AVE RM4008  
WASHINGTON, DC 20001

**REGISTERED AGENT INFORMATION**

Agent Name:ALAN P. DYE  
Address:1747 PA AVE., N.W.  
WASHINGTON, DC 20006

TO ORDER ORIGINAL FILINGS OR OTHER RELATED DOCUMENTS, CALL 1-877-DOC-RETR  
(1-877-362-7387).

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END OF DOCUMENT

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13122334059

**CORPORATE RECORDS & BUSINESS REGISTRATIONS**

This Record Last Updated:08/14/2002  
Database Last Updated:07-21-2004  
Update Frequency:QUARTERLY  
Current Date:07/22/2004  
Source:AS REPORTED BY THE SECRETARY OF STATE OR OTHER  
OFFICIAL SOURCE

**COMPANY INFORMATION**

Name:LIBERTY ALLIANCE (THE)

**FILING INFORMATION**

Filing Date:01/03/1986  
State of Incorporation:DISTRICT OF COLUMBIA  
Date Incorporated:01/03/1986  
Status:ACTIVE  
Corporation Type:NON-PROFIT  
Business Type:CORPORATION  
Registration ID#:860032-DNP  
Where Filed:TAX PROCESSING DIVISON  
300 INDIANA AVE RM4008  
WASHINGTON, DC 20001

**REGISTERED AGENT INFORMATION**

Agent Name:ALAN P. DYE  
Address:1747 PENNSYLVANIA AVENUE, N.W.  
WASHINGTON, DC 20006

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END OF DOCUMENT

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**fc@list.falwell.com**

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Message: [previous](#) - [next](#)  
Month: [July 2004](#)

**GARY BAUER ON THE POLITICAL FRONTLINES**

**| Date: Thu, 1 Jul 2004 15:24:08 -0400**

Falwell Confidential

Date: July 1, 2004  
From: Jerry Falwell

GARY BAUER ON THE POLITICAL FRONTLINES

"Always vote for principle, though you may vote alone, and you may cherish the sweetest reflection that your vote is never lost." - John Quincy Adams

For conservative people of faith, voting for principle this year means voting for the re-election of George W. Bush. The alternative, in my mind, is simply unthinkable.

To the pro-life, pro-family, pro-traditional marriage, pro-America voters in this nation, we must determine that President Bush is the man with our interests at heart. It is that simple.

The distressing fact regarding this election is, however, that President Bush stands at a political crossroads, with John Kerry ostensibly running neck-and-neck with him in many polls. In addition, Mr. Kerry has raised an astounding \$150 million for his campaign.

So the vote of every conservative is imperative. However, simply voting may not be enough. I believe it is the responsibility of every political conservative, every evangelical Christian, every pro-life Catholic, every traditional Jew, every Reagan Democrat, and everyone in between to get serious about re-electing President Bush.

That is why I am utilizing this column to urge you to support the Campaign for Working Families, which is headed by Gary Bauer. It is the organization that I believe can have the greatest impact in re-electing Mr. Bush to the Oval Office.

Mr. Bauer recently stated, "John Kerry's success, not to mention the incessant negativism of the nightly news outlets, is beginning to take its toll. President Bush's approval ratings are dropping - even on the crucial issues of foreign policy and national security!"

He noted also that radical leftist groups such as MoveOn.org, Emily's List and the Human Rights Campaign are unremittingly working to defeat President Bush. Furthermore, the left has been facilitated by billionaire George Soros and Hollywood liberals who despise our President.

The fact is, there are very few conservative organizations like the Campaign for Working Families that can actually counter the radical left and its agendas of abortion-on-demand, same-sex "marriage" and packing the courts with activist judges who revile the Constitution.

**Exhibit 2**

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Mr. Bauer recently stated that there is more troubling news on the horizon.

"Weeks ago," he said, "it seemed we were guaranteed to gain seats in the Senate. Now we're on the defensive. Our majority in the House once seemed secure, greatly aided by redistricting in Texas. But with two consecutive losses in special elections, the Democrats are raking in money hand-over-fist. Unfortunately, we are not."

Our action is urgently needed.

I am urging everyone reading this column today to take a moment to send a financial gift to the Campaign for Working Families in order to help in the crucial election of President Bush and conservative political leaders across this nation.

I honestly believe that it is essential that we flood Campaign for Working Families with financial help in order to secure our future. This organization that is on the frontlines on our behalf can accept contributions up to \$5,000 per person, but even small gifts are important and quickly add up when we join together.

Please, right now, pick up your phone and call 703-671-8800 or visit the Campaign for Working Families website ([https://www.cwfpac.com/cwf\\_contribution.htm](https://www.cwfpac.com/cwf_contribution.htm)) to make a generous donation by credit card. In addition, may we pray fervently each day for the re-election of George W. Bush at this critical time in our nation's history.

#### AN OLD-FASHIONED INDEPENDENCE DAY CELEBRATION ON LIBERTY MOUNTAIN

This year's Fourth of July celebration on Liberty Mountain, in Lynchburg, Va., will once again be the place to be for those wanting to celebrate America, participate in a variety of family-friendly events and witness a spectacular fireworks display that will rock the surrounding mountains. Attend this day of fun and celebration, beginning at 3:00 p.m., as thousands of people gather to honor America and experience great fellowship. Here is our agenda for this Sunday afternoon and evening event:

#### FAMILY FUN AND GAMES

Beginning at 3:00 p.m., a variety of terrific rides and games will be available to kids of all ages across the Liberty campus. While the rides will be shut down during the evening celebration event, they will reopen following the fireworks display at 9:30 p.m. In addition, many food vendors will have a large variety of cuisines available throughout the day; or you may pack a lunch and eat on the grounds, or at a tailgating get-together.

#### GOD AND COUNTRY CELEBRATION

At 8:00 p.m., in Williams Football Stadium, we will present a patriotic and country-style music celebration featuring Charles Billingsley, Linwood Campbell, Doug Oldham, Shari Falwell, Scott Bullman, Josh Rice, Steve Wilson, Bev Lowry, Natasha Lowry, Stephen Kerr (who will play "Taps"), Tracy Cooper, the TRBC Choir and Singers, and others. In addition, I will be bringing a brief patriotic message on the importance of preserving the traditional values of our Founding Fathers.

#### THUNDER ON THE MOUNTAIN

To top off the night at about 9:30 p.m., you will enjoy front row seats for the largest (and loudest!) fireworks display in Central Virginia. This annual fireworks display has become a staple for our July 4 celebration and

it is guaranteed to shake the stadium.

NO CHARGE TO ATTEND

Here's the best news of all - there are no admission fees, no parking fees and no charges for any of the inflatable rides and games. The only costs you might incur will be for the food or drinks you purchase throughout the day. Not only is this event family-friendly, it is also wallet-friendly to families. If you have any questions regarding this very special day, please call Thomas Road Baptist Church (434-239-9281) to speak with a representative who can help you.

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**Saturday, July 17, 2004**

Money & Work

**FALWELL ACCUSED OF VIOLATING TAX RULE**

By The Associated Press

Rev. Jerry **Falwell** RICHMOND

A watchdog group says the reverend, by endorsing President Bush in a column, should be investigated.

A religious watchdog group has accused the Rev. Jerry **Falwell** of violating his church's tax-exempt status by endorsing President Bush and urging followers to donate to a conservative political action campaign.

The Americans United for Separation of Church and State filed a complaint with the Internal Revenue Service on Thursday, seeking an investigation.

"We want to demonstrate that even the most wealthy and powerful television preachers are not above the law," said Barry Lynn, the group's executive director. "Basically, Jerry **Falwell** is thumbing his nose at the **IRS**."

**Falwell** wrote in his "**Falwell Confidential**" bulletin -- sent to supporters July 1 -- "For conservative people of faith, voting for principle this year means voting for the re-election of George W. Bush."

He continued, "This is why I am utilizing this column to urge you to support the Campaign for Working Families, which is headed by Gary Bauer. It is the organization that I believe can have the greatest impact in re-electing Mr. Bush to the Oval Office."

The e-mail appears on the Jerry **Falwell** Ministries Web site, <http://falwell.com>, and includes a link to the contribution Web site for the Campaign for Working Families.

**Falwell** said in a telephone interview Friday that he didn't violate the law because he expressed his personal opinion in the newsletter and his Web site carried it as an "op-ed piece." He said that he frequently voiced his political opinion from the pulpit but that he always qualified it as a statement from a private citizen.

"It's a gray area for some people," **Falwell** said. "They feel that a religious man should neither be for or against anybody, but in reality, most are, and the only times there are complaints is when the person is a conservative like myself."

Jerry **Falwell** Jr. is **Falwell's** son and attorney for **Falwell's** Thomas Road Baptist Church in Lynchburg. He said the Web site was registered and paid for by a tax-exempt organization affiliated with the church called Liberty Alliance, which by law was permitted to partake in some political lobbying.

Lynn pointed out, however, that Liberty Alliance's name couldn't be seen anywhere on the Web site.

"(**Falwell**) is once again playing a shell game that, frankly, wouldn't work in a backwoods

Exhibit 3

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carnival," he said. "He knows this is not what the law permits, and he seemingly doesn't care."

In a letter obtained by The Associated Press that was sent to officials at the Republican and Democratic national committees June 10, the director of the IRS' exempt-organizations division -- Steven Miller -- wrote that religious leaders were strictly prohibited from politicking as spokespeople for the church.

"Leaders cannot make partisan comments in official organization publications or at official organization functions, including official church publications and functions," Miller wrote in the letter.

He wrote that violators could lose their tax-exempt status and could be subject to an excise tax on the amount of money spent on the prohibited campaign activity.

Mitchell Kane, a tax law professor at the University of Virginia, said that despite what religious leaders like Falwell might argue, there was no ambiguity in the law.

"If you are at a church function, this is not in your personal capacity," he said. "That seems to run pretty clearly in counter with the IRS interpretation of the statute."

Falwell has been the subject of such complaints before. In 1993, his television ministry, the Old Time Gospel Hour, agreed to pay \$50,000 in tax penalties for political activity in 1986 and 1987.

Falwell accused Lynn of trying to "frighten" right-wing Christian voters. He said many churches had invited presumptive Democratic presidential candidate John Kerry to speak at functions in the last year without any problem.

However, Miller wrote, the law doesn't prohibit churches from inviting political candidates to speak at events, so long as they provide equal opportunity to other candidates for the same office. \*

TABULAR OR GRAPHIC MATERIAL SET FORTH IN THIS DOCUMENT IS NOT DISPLAYABLE

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**From:** "Dr. Jerry Falwell" <webmaster-reply@falwell.com> Add to Address Book  
**To:** fc@list.falwell.com  
**Subject:** BARRY LYNN IS TRYING TO SCARE CHURCHES ... AGAIN  
**Date:** Wed, 21 Jul 2004 15:22:06 -0400

Falwell Confidential

Date: July 21, 2004  
From: Jerry Falwell

**BARRY LYNN IS TRYING TO SCARE CHURCHES ... AGAIN**

The leftist organization Americans United for Separation of Church and State (AU) has called for the Internal Revenue Service to revoke the tax exempt status of my church and ministry because of the content of a recent "Falwell Confidential" I wrote in which I suggested that President Bush was the candidate of choice for conservative Christians.

Barry Lynn, the former American Civil Liberties Union operative, now Heads AU. You have heard me refer to AU as a "surrogate of the Democratic National Committee" (DNC). My son, Jerry Jr., Liberty University's vice-chancellor and general counsel, has suggested that Mr. Lynn rename his organization Americans United for Separation of Conservative Churches and State.

Mr. Lynn, like Jesse Jackson and Al Sharpton, for the purpose of seeking respectability in the media, likes to use the title "reverend," even though I have been unable to find the name and location of any church he has ever pastored, or the location and time where he ever delivered an actual sermon.

A couple of years ago while debating Mr. Lynn on a national TV talk show, I accused him of being an attack dog for the DNC and asked him why he never challenged Rev. Jackson, Rev. Sharpton, Bill Clinton, Al Gore and other liberals for brazenly campaigning in African-American churches. As a result, Mr. Lynn has since written some complaint letters to the IRS regarding such situations for the express purpose, in my opinion, of leaving an impression of impartiality.

**FRIGHT LETTERS TO CHURCHES ARE COMING**

About this time each election year, AU sends what I term a "fright letter" to thousands of conservative evangelical pastors, telling them – quite incorrectly - that any use of voter

Exhibit 4

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guides, political discourse or other such activity could result in a loss of tax-exempt status for their churches.

However, no such letter is sent to African-American churches or to liberal main-line denominational churches. Traditionally, the Democratic candidates speak in many African-American churches during their presidential campaigns.

Last Sunday, July 18, Sen. John Edwards spoke in the pulpit of the St. Mark AME Church in Orlando. As reported in wire stories and on NBC Nightly News, the pastor of the church strongly endorsed the Kerry-Edwards ticket. As also shown on this same NBC broadcast, Sen. John Kerry, on April 4, spoke in a large African-American church where the pastor introduced him as "the next President of the United States."

Bill Clinton and Al Gore routinely conducted similar church-based campaigning.

Mr. Kerry and Mr. Edwards will certainly follow this tradition right up to election time. I have been documenting this "church activity on the left" for many years. Neither AU nor the so-called "mainstream media" have expressed any outrage over this seeming violation of IRS tax regulations. This glaring and gross hypocrisy is obvious to all but those who are blinded by their leftist biases.

#### **WE HAVE VIOLATED NO LAWS OR REGULATIONS**

By the way, this Falwell Confidential weekly newsletter is owned and sponsored by the Liberty Alliance. The Liberty Alliance is a not-for-profit educational and lobbying organization. It is an IRS recognized 501(c)(4) corporation, chartered in Washington, D.C., that is allowed to lobby Congress and influence legislation.

Our goal at Liberty Alliance is to promote traditional family values and battle the liberals who would attempt to destroy the godly principles that were at the foundation of this nation.

We still hold to the four main tenets of the original Moral Majority as it was established in 1979. We are: 1) pro-family, 2) pro-life, 3) pro-defense and, 4) pro-Israel. Gifts to the Liberty Alliance are, by law, not tax-deductible.

Further, my web site, <http://www.falwell.com>, is also sponsored by the Liberty Alliance. Neither my Thomas Road Baptist Church, Jerry Falwell Ministries nor Liberty University have any affiliation with the Liberty Alliance. As a publisher of a weekly newsletter ( <http://www.nljonline.com> ) and a monthly newspaper and a tax-paying citizen, I may legally, under First Amendment protection, express my views and opinions just like Rev. Jackson, Rev. Sharpton and "Rev." Lynn.

**NO CHURCH HAS EVER LOST ITS TAX-EXEMPT STATUS**

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Every American pastor, as a tax-paying citizen, is free to express his views and opinions. I continually urge pastors who receive the traditional Barry Lynn "scare letter" to simply ignore it. America needs your voice!

The Church at Pierce Creek in Binghamton, N.Y., had its "IRS letter" pulled for one day a few years ago. For the full story on this single instance in American history where a church's tax exemption was challenged, I am, by permission, reprinting an article by Mat Staver, general counsel and president of the Orlando, Fla.-based Liberty Counsel, a law firm of several hundred attorneys that defends the constitutional rights of churches and Christians. It appears below.

In the meantime, pastors, continue to speak the truth from your pulpits. Don't let any inaccurate letters scare you away from urging your congregations to political action.

### **CHURCH'S LOSS OF TAX-EXEMPT STATUS LETTER TURNS OUT TO BE A VICTORY FOR CHURCHES**

by Mathew D. Staver

Founder, President and General Counsel  
Liberty Counsel, Orlando, FL  
<http://www.lc.org>

On May 12, 2000, the Federal Court of Appeals for the District of Columbia sided with the IRS' decision to revoke a tax-exempt letter ruling from the Church at Pierce Creek located in Binghamton, NY. However, the Court ruling shows that the IRS has very little authority over churches.

(1) The ruling underscores the fact that churches do not need to fear the loss of their tax-exempt status.

The case began on October 30, 1992, four days before the presidential election, when the Church at Pierce Creek placed full-page advertisements in USA Today and the Washington Times. Each ad bore the headline "Christians Beware" and pointed out that then-Governor Bill Clinton had extreme views regarding abortion and homosexuality. The advertisement clearly noted that it was sponsored by the Church and its pastor and furthermore solicited "tax deductible donations" for the advertisement. The ads then gave the Church's address. As a result, the Church received hundreds of contributions.

On November 20, 1992, the IRS notified the Church that it intended to conduct an inquiry as to whether the Church was operating as a tax-exempt organization. After negotiations failed, the IRS revoked the Church's tax-exempt letter ruling and the Church filed suit.

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The Court pointed out that under the Internal Revenue Code, churches are the only institutions that are not required to apply for tax-exempt status. Churches, by their very nature, are considered tax-exempt.

(2) While churches may ask the IRS for an advance letter ruling, churches are not required to do so. If a church does not seek a letter ruling, a donor's contributions are still tax deductible. In the event of an audit, the donor must prove that the church is operating like a tax-exempt organization and following the requirements of IRS Code 501(c)(3), which includes a prohibition on endorsing or opposing a candidate for political office. If a letter ruling is in place, the donor simply points to the letter ruling on file with the IRS.

The Church at Pierce Creek had applied for and received a letter ruling. The IRS simply revoked the letter ruling and the Church sued to get it back. The Court noted that "because of the unique treatment churches receive under the Internal Revenue Code, the impact of the revocation is likely to be more symbolic than substantial."

Indeed, the tax-exempt letter revocation is only symbolic and not substantive. During the oral argument, counsel for the IRS confirmed that if the Church chose not to intervene in future political campaigns, it may hold itself out as a 501(c)(3) organization and receive all of the benefits of that status. The Court wrote: "All that will have been lost is the advance assurance of deductibility in the event a donor should be audited."

(3) The Court also pointed out that revocation of the letter ruling does not make the Church liable for the payment of taxes.

(4) As the IRS conceded during oral argument, "the revocation of the exemption does not convert bona fide donations into income taxable to the Church."

(5) The Court also noted that it knew of no authority "to prevent the Church from reapplying for a prospective determination of its tax-exempt status and regaining the advance assurance of deductibility - provided, of course, that it renounces future involvement in political campaigns."

(6) So what is the impact of this ruling? It's certainly not as Barry Lynn, of the Americans United for Separation of Church and State, declared by saying the ruling was a "staggering defeat for Pat Robertson, Jerry Falwell and others who want to convert America's churches into a partisan political machine." Indeed, this ruling actually helps Pat Robertson and Dr. Jerry Falwell.

Understand that the only thing the Church lost in this case is its advance tax-exempt letter ruling. Contributions given prior to the revocation of the IRS letter are still deductible and are not taxable to the Church. After the letter ruling was revoked, the Church could continue as a church, continue receiving donations, and donors could continue to claim deductions on their income tax return, provided that the Church did not continue to endorse or oppose candidates. If the Church wants an advance letter ruling at some point

in the future, it is free to ask for another one. Obviously in the case of the presidential election, the Church could easily cease endorsing or opposing a candidate since the election had transpired.

Either the Church was naive, or it sought to pick a fight with the IRS. The case included several hundred pages of newspaper articles where other churches had invited candidates to speak in services where the IRS did nothing. The Church at Pierce Creek sought to make headlines when it took out full-page ads in USA Today and the Washington Times. The Church then clearly identified itself and requested contributions. This is the first case in history where a church has ever lost its tax-exempt letter ruling. It is the most outrageous set of facts, because the full-page ads essentially put a target in the church's front yard. Absent these outrageous facts, no church has ever lost its tax-exempt status.

Moreover, even with these facts begging for a fight with the IRS, the case shows the IRS has almost no teeth. A church can give up the tax-exempt letter ruling, and continue on after that date so long as it doesn't actively endorse or oppose a candidate. A church can then apply for another letter ruling at some point in the future if it chooses to do so. In this way, the church can continue on with its activity with virtually no interruption.

The IRS regulations are clear that, while churches may not endorse or oppose a candidate for political office, churches may educate about the candidates' viewpoints. Education can take the form of sermons, forums, debates, or voter guides. The church may educate about its doctrinal positions that are relevant to the political races. Education is perfectly permissible for a 501(c)(3) organization. Moreover, churches can engage in lobbying for or against legislation so long as churches do not devote more than a substantial part of their overall activity toward lobbying efforts. Indeed, no church has ever lost its tax-exempt status for engaging in too much lobbying.

Despite the huffing and puffing of groups like Americans United for Separation of Church and State or People for the American Way, they are no more powerful than the wolf blowing against the little pig's brick house. I am sure that these organizations will try to terrorize pastors into silence, but everyone should know that, instead of a muzzle, this case is actually a megaphone for churches.

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